November 1999 Volume 9, Issue 11

for The Defense

The Training Newsletter for the Maricopa County Public Defender's Office

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for The Defense

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VOUCHING – THE SERIES

PART 2: PLACING THE PRESTIGE OF THE GOVERNMENT BEHIND ITS WITNESSES

By Donna Lee Elm
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In this article, the second in a series discussing vouching, we turn to ways attorneys argue credibility by placing the prestige of the government behind their witnesses. There are four categories addressed: third person vouching, prosecutorial screening, credibility of police officers, and plea bargained testimony.

Third Person Vouching

When the prosecutor argues, "I vouch for a witness," he is vouching in first person; when he argues, "He vouches for a witness," he is vouching in third person. Third person vouching is usually treated like the first person variety, and is equally insidious. In some cases it is, in fact, much worse, since the jury might not trust the prosecutor's word for it when he vouches in first person. For instance, because a jury's job is to determine credibility, it is worse to argue that another jury believed certain witnesses.

The prosecutor can vouch by arguing that police believed/disbelieved witnesses or that the police who testified were believed by others. For example:

> *[The] good cop [who used] good, good police work ... did not believe defendant's*

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MURDER IN THE FIRST?

ARE THE CRIMES OF FIRST AND SECOND DEGREE MURDER MERGED?

By Gary J. Bevilacqua
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You just received a new case where your client is charged with two counts of first-degree murder: one based on felony murder and, alternatively, one based on premeditated murder. Typically the indictment will read as follows:

> *On or about the 4th day of April, 1999 [the defendant], intending or knowing that this conduct would cause*

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> *denial of guilt [and saved the day by getting defendant to confess].* [1]
>
> *[In direct examination:] I can advise you at this time that based upon the investigation made by the police officers involved in this case ... that no charges would be brought against [State's witness] as a result of your testimony today.* [2]
>
> *Lieutenant George Bennett was chosen by Police Commissioner Nichols to head the investigation which led to the charges in the instant case. ... [Bennett was selected because Commissioner Nichols felt that Bennett could] investigate thoroughly, honestly, with integrity.* [3]

In all these examples, the argument was deemed improper. However, only in the second example did the court reverse. It is noteworthy that there were other examples of misconduct in the two other cases, but in the one that was reversed, that quote was the only complaint raised on appeal. Obviously some jurisdictions are much more sensitive to this type of misconduct, and are quicker to reverse in order to deter misconduct than others. Arizona, by the way, tends to be a conservative forum, and generally does not reverse for such misconduct.

The misconduct is greater when the third person is another credibility-determining body such as the grand jury, the jury in a previous trial, or the judge.

The misconduct is greater when the third person is another credibility-determining body such as the grand jury, the jury in a previous trial, or the judge. For example:

> *Scrutinize his testimony carefully and you will know the boy is telling the truth. ... He told you himself from the stand that he was taken before the Grand Jury. Why was he taken before the Grand Jury? ... The reason he was taken before the Grand Jury was because that not only subjected him to punishment for any lie that he would tell here today, but it would also guarantee that he would tell the truth here before you today or yesterday in court.* [4]
>
> *[The Grand Jury had already passed upon the guilt of the defendant.]* [5]
>
> *I wonder what the other two juries thought about Mr. Dean's testimony, remember that. He has been on the witness stand at the bombing trial for the government. How did those juries react to Mr. Dean's testimony?* [6]
>
> *Look at the transcript of that proceeding where [the snitch] was sentenced when the Judge says, 'You have done what I asked you to do.' That's Judge Sneed [who accepted his guilty plea]. Look at the plea agreements of [two other snitches] in which it says, 'The Court,' that means the Judge, 'must decide if these agreements are in the interest of justice and has the sole discretion.' The Court has the discretion not to accept them.* [7]
>
> *You can bet the information they gave the judge was sufficient to get the judge to sign the warrant. If you think the jury hears all the evidence on this search warrant in a criminal case, you're crazy. ... If this was a mere presence case, it wouldn't have got this far. The Court would have thrown us out last week, but he hasn't.* [8]

The first example (grand jury) directly above, surprisingly, did not result in a reversal. Though the Maryland court found that, overall, it did not override the weight of guilt, it also concluded that this argument "was fair comment made during the course of an oral argument and that it was not misleading to the jury." Most jurisdictions would not agree. For instance, regarding the second grand jury example directly above, the court not only found it improper, but added, "Such things have no place in a proper summation and too frequently occur." Arizona, too, would probably draw the line where reference to another truth-finding body's conclusions was argued.

Note that the last three arguments above do not overtly "vouch." It is wise to think about what conclusions *underlie* an argument about third persons' findings. In the third example above, the jury was not told what the other juries had decided, but it was easy for them to guess, given the fact that the prosecutor was asking them to speculate

about those verdicts. This was clearly improper, "bordering on reversible." Obviously, the jury's discretion to decide credibility should not be impinged with irrelevant evidence that another jury – or judge – found the witness credible. In the fourth and fifth examples, the clear implication of those arguments was that a judge had found the witness truthful. The courts reversed. "When the prosecutor's comments directly affected the ultimate and only testimony against [the defendant], it cannot be considered harmless error." *State v. Dorr*, 636 F.2d 117 (5th Cir. 1981). Note that the last example above is an Arizona case; the prosecutor argued that a judge found probable cause for the search warrant and then accepted the weight of the prosecution's case by not dismissing it before trial. This was highly unfair and improper, and the Arizona Supreme Court reversed.

Obviously, the jury's discretion to decide credibility should not be impinged with irrelevant evidence that another jury – or judge – found the witness credible.

It is also misconduct to argue the beliefs or disbeliefs of the defendant or his attorney. [9] What they think is *never* a proper issue for a jury to consider, and it is facts not in evidence. Some examples include:

> *Defense Counsel never told us about how you reconcile [the defendant's] statement with Mr. Demonico and Mr. Cammack. They didn't even dare do anything, didn't even try, because they knew Mr. Reilly was a liar.* [10]

> *[Defense counsels insinuated that the government did not believe its key witness.]* [11]

> *[It was fair to infer from the evidence of the deal with [the snitch] that the state must have had some doubt of the truth of the defendant's confession.]* [12]

The first example was referred to as "prosecutorial overkill." The court reversed for two reasons: "the jury would presume that defense counsel were in a position to know the true facts of the case. Not only did this argument go beyond any facts in evidence but it also accused defense counsel of knowledge of Reilly's untruthfulness and of 'mislead[ing] the judge, jury, or tribunal.'"

The last two examples directly above were both instances where the *defense* improperly argued the prosecutor's lack of faith in his witnesses. Recall that the defense is equally bound by these rules prohibiting vouching. The courts found both arguments to be improper.

In perhaps its most creative form, one prosecutor argued his dead victim's belief that the crime was a first-degree murder:

> *My best witness isn't here today. But if he could come back, if Mr. Sweeney could come back and sit in this chair and face you, the jurors, I believe he would say ... "The only way you couldn't find this defendant guilty of murder of the first degree is for me to come alive again before your very eyes and walk out of that door."* [13]

Prosecutorial Screening

> *We wouldn't be here unless what I'm about to tell you really happened.* [14]

> *The system doesn't put innocent people in jail.* [15]

> *I told you earlier about the obligations of a prosecutor, and one of the obligations is that you don't charge such a serious crime of murder unless you have the proof and the evidence to back it up.* [16]

> *It is my duty and obligation if I become aware that someone's not guilty, to dismiss that case. That's my obligation as a sworn officer of the Court. And we've got two hundred sixty or two hundred seventy other felony cases on this call that all need to be fully and properly prosecuted and investigated.* [17]

In what may be the most excessive example of putting the prestige of the government behind a witness, one prosecutor argued this dilly:

> *I assure you, I have been a prosecutor for 20 years. When I first entered the District Attorney's Office, a very distinguished gentleman, now dead, who was Chief Deputy, caused me to read some cases from the Supreme Court of the United States, to read the Constitution of the United States, the Bill of Rights, and the Supreme Court of*

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> *California as to the duties of a prosecutor. Every one of the higher courts, the Constitution, everything in the records; the law says that a prosecutor shall at all times be fair, shall go down the middle of the road and shall not take sides, that this defendant there is his client, and his duty to the defendant comes first to the duty of anybody else, because he is the attorney for all the people. I assure you on my word of honor, I am an old man now; some day soon I have got to meet a higher Judge than any Judge here, and I am confident as I stand here I have never in my life prosecuted an innocent man.* [18]

Argument placing the prestige of the government behind its case is treated similarly to instances where the prosecutor indicates he has evaluated a witness's story before calling that person to testify. For example:

> *I can absolutely assure you of one thing... the state wouldn't have put Mr. Callaway on the witness stand if they didn't believe every word out of his mouth about the conversations he had.* [19]

> *She has absolutely no reason to lie. In fact, it is insulting to think the United States would put on such a witness.* [20]

> *I will never knowingly permit a man to testify falsely in order to obtain a conviction, while I am county attorney, and it has been testified here that I was present in the jail when this man was brought in.* [21]

This form of argument violates both of the basic types of vouching. *State v. Bible*, 175 Ariz. 549, 601, 858 P.2d 1152, 1204 (1993)(first example in this section). It places the prestige of the government behind its case and suggests that information not presented to the jury supports conviction. *See United States v. Roberts*, 618 F.2d 530 (9th Cir.1980). It additionally impacts the defendant's confrontation rights; courts reason that if the prosecutor had wanted to testify about the case, he should have been sworn and subjected to cross-examination. *Fitzgerald v. State*, 91 Ok. Crim. 437, 219 P.2d 1024 (1950). Nonetheless, in a case where a prosecutor did testify and was cross-examined, the court reversed when his colleague (who tried the case) vouched this way -- so confrontation does not alone cure the impropriety. *People v. Morris*, 437 N.Y.S.2d 975 (App. 1973).

Generally, courts hold that it is highly improper and will reverse a case unless it was obviously harmless. Arizona courts also consider such argument "highly improper." *E.g.*, *Bible* (reference the first example above). However, it is fairly common knowledge that prosecuting agencies need to investigate and weigh a case before charging it; jurors may already presume this, even if the prosecutor did not argue it. Hence vouching this way is not always reversible error. In an Arizona case, *State v. Carriger*, 143 Ariz. 142, 692 P.2d 991 (1984), the court held that the following argument "stat[ed] what had to be patently obvious to the jury already":

> *If there [was] any indication of [the snitch's] guilt or complicity in this, he would be on trial with [the defendant].*

Moreover, many cases found that this vouching was an "invited response" to defense argument. In *State v. Henry*, 176 Ariz. 569, 863 P.2d 861 (1993), the quote that was provided as the second example in this section was "invited" by argument that the state was "double-dipping," *i.e.*, trying to convict both co-defendants at severed trials by arguing the that the co-defendant not on trial was innocent. In *People v. Bolton*, 35 Ill.App.3d 965, 343 N.E.2d 190 (App. 1976), the defense had asked the witness why he had not testified at the first trial and a different witness had; this "invited" the state to argue that she had a duty not to present witnesses she thought were lying and to call those she felt were credible. In *State v. Abdullah*, 309 N.C. 63, 306 S. E.2d 100 (1983), the prosecutor's argument that he has to believe what his witnesses say and not put on any witnesses he believed would lie was permissible after the defense insinuated that the state was concealing evidence when it did not call certain witnesses.

Note, however, that "invited response" only excuses vouching when the defense argument was *actually* improper.

Note, however, that "invited response" only excuses vouching when the defense argument was *actually* improper. An Arizona case exemplifies this: In *State v. Vincent*, 159 Ariz. 418, 768 P.2d 150 (1989) (the fifth example above), because the defense argument that the snitch was biased and unbelievable was legitimate, the prosecutor was not entitled to reply that he "wouldn't have put [the snitch]

on the stand if he didn't believe every word out of his mouth." Similarly in *State v. Pennington*, 115 N.M. 372, 851 P.2d 494 (App. 1993), the prosecutor was not permitted to argue that he could not ethically present "something I know to be a lie" when the defense had not accused *him* of suborning perjury, and only accused the complainant of lying.

Credibility of Police Officers
Prestige of the Police Department

Police present a special category because the proposition that they are sworn protectors of the people can be used improperly to bolster their testimony. Thus prosecutors may place the respect for and prestige of the police department behind a witness; this is analogous to putting the prestige of the county attorney's office behind a witness. It is this "halo" effect that, if unduly emphasized in trial, can cross the line into improper vouching. Courts generally consider repeated arguments in this vein improper.

> *On the one hand you have got [a deputy] who, in addition to being a Warren County Deputy, is a person of impecable [sic] credentials versus [the defendant], who by her own testimony to you people in her own community didn't trust. You have [the deputy] who is a member of the Multi-County Drug Enforcement Group, MEG, with eight years of integrity serving in this community versus the Defendant, who, again, in the words of her attorney, was a member of the drug scene.* [22]

> *When one of those men in that blue uniform gets up on this stand and raises his hand up and swears to tell the truth you can rest assured that's what he is going to do.* [23]

> *The jury should believe that the police officers who testified were more credible than defendant because of their sworn oaths of office.* [24]

> *Police officers generally have more integrity than criminal defense lawyers and other witnesses and that the jurors should find the police more credible because, as citizens, the jurors depend upon the police.* [25]

In *People v. Ford*, 113 Ill.App.3d 659, 447 N.E.2d 564 (1983) (the first example above), the prosecutor made repeated references to the witness's status as a police officer and sworn deputy. Among others, the attorney argued that he had impeccable credentials, had years of integrity by serving the community, and was a sworn officer of the law. This was "excessive," and the court reversed.

Excessiveness is a critical factor. An isolated reference or so to the witness as an officer does not usually suffice to establish misconduct. *E.g.*, *United States v. Murphy*, 768 F.2d 1518 (7th Cir. 1985). Additionally, a statement like "John Meyers is a sworn officer," is usually based on facts in the record. *E.g.*, *Kowalczyk v. United States*, 936 F.Supp. 1127 (E.D.N.Y. 1996). Repeated references to it, on the other hand, can be improper. *Ford*. It appears, therefore, that it is the repetition of or emphasis on this type of known fact that renders it improper.

Another critical factor, especially in Arizona, would be arguing that police should be believed *simply* because they are police.

Another critical factor, especially in Arizona, would be arguing that police should be believed *simply because* they are police. *E.g.*, *People v. Richardson*, 139 Ill.App.3d 598, 487 N.E.2d 716 (1985). This is mild vouching, but in Arizona, it is substantially improper because our law expressly contradicts that. In fact, we routinely reject jurors for cause in voir dire if they believe police should be believed simply due to their employment. *See also* RAJI Standard Criminal #34:

> *The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. You are to consider the testimony of a law enforcement officer just as you would the testimony of any other witness.*

"Police Never Lie" Argument

> *A police officer must be believed simply because she is a police officer.* [26]

> *A law enforcement officer is no good as a witness if his credibility is in doubt.* [27]

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> *The undercover officer didn't get his ribbons for being a liar.* [28]

> *Police respond to the crime. They're the line between society and crime and they report what they see and what they hear. A police officer is objective.* [29]

Prosecutors have argued this popular modern myth in attempting to bolster their police witnesses' testimony. It constitutes vouching because it attempts to influence the jury's judgment of credibility by arguing matters not properly before them. Generally, courts find this improper, though not usually egregious. In the *Ford* case discussed above, after the prosecutor made repeated arguments about the witness as a deputy, he concluded: She is a sworn police officer; would a sworn deputy lie and perjure herself? The court reversed. In *State v. Staples*, 263 N.J.Super. 602, 623 A.2d 791 (1993), argument that police witnesses are credible simply because they are policemen (among others) also led to reversal. Given Arizona's jury instruction (cited above), this argument would be quite improper because, although it may constitute a correct statement of the facts, it is not a correct statement of the law. It is thus impermissible argument.

"No Motive to Lie" Argument

> *What reason would two officers with six years of experience have to come in here and lie? I submit to you, absolutely none.*[30]

> *The state's witnesses had no reason to perjure themselves.* [31]

> *Judge Kowalski said that [he was transferred for resisting bribes]. What motivation would Judge Kowalski have to come in here and lie? ... Why would he come in here and lie unless the point is that he came in here because he had relevant information?* [32]

It is not uncommon to hear an attorney make this sort of argument. At worst, courts consider it "borderline" improper or *de minimis* error. *Ward v. State*, 733 P.2d 625 (Alaska App. 1987)(on the border between permissible common-sense inference from facts and inadmissible commentary bolstering witness's credibility); *People v. Moran*, 546 N.Y.S.2d 611 (App. 1989)(if error, it is *de minimis*). Presumably it is improper because it sounds like a personal opinion or conclusion (even though not framed as an "I" statement). But jurisdictions allowing argument of the party's position (including probably Arizona), would likely excuse it as a declaration of position.

It should be noted that many courts do not consider it vouching at all. For example, arguing that the officers had no reason to target the defendant with false allegations was not vouching: it was not based on the prosecutor's personal knowledge, and it reflected a permissible inference from the facts. *Commonwealth v. Gurney*, 413 Mass. 97, 595 N.E.2d 320 (1992). Additionally, arguing that the victim had no interest in lying was not vouching; the court analogized it to the rule that a prosecutor may argue that, based on the evidence, the defendant is guilty, noting that he may express the conclusion he has reached as long as it arises only from the record (a position statement). *State v. Wassing*, 141 Minn. 106, 169 N.W. 485 (1918). Finally, arguing that the police had no motive to lie may not be vouching; rather, it was an "invited response" to the defense challenge of their credibility. *People v. Ortiz*, 629 N.Y.S.2d 235 (App. 1995).

Plea Bargained Testimony

"Vouching" objections have been raised when the State attempts to admit or argue their "snitch" witness's credibility based upon the "testify truthfully" term of his plea bargain. The theory is that, by having that term in the agreement and allowing the witness to conclude his testimony, the prosecutor implicitly demonstrated that he has believed the testimony was truthful. Such arguments could include:

> *[The co-defendant] had testified truthfully because he knew that if he didn't testify truthfully, his plea bargain would've been broken and he would have been facing the original charges.* [33]

> *[A]ny half-truths, withholding of information, falsehoods or perjury on the part of Mr. Patrick will automatically void this agreement. Mr. Patrick does not want to stay in jail any longer than he has to. . . And if the government finds that Mr. Patrick has lied, that's exactly what's going to happen.* [34]

> *Those were the terms. In return for his truthful testimony, the charges against [the co-defendant] in this case would be dismissed.* [35]

There is a body of case law treating the problems of introducing and arguing credibility based on "testify truthfully" conditions. *See* Annot., Use of Plea Bargain or Grant of Immunity as Improper Vouching for Credibility of Witnesses in Federal Cases, 76 A.L.R.Fed. 409 §5. The theory is that such terms *infer* that the prosecutor can vouch for the witness's truthfulness. Hence these arguments may draw a "vouching" objection.

There is a body of case law treating the problems of introducing and arguing credibility based on "testify truthfully" conditions.

However, jurisdictions overwhelmingly find that this type of argument does not "vouch." For example, one court held that arguing that the decision to grant immunity did not amount to a personal assurance of that witness's veracity or bolster her credibility by matters outside the record. *United States v. Segal*, 649 F.2d 599 (8th Cir. 1981). Similarly, arguing the "testify truthfully" clause did not place the prestige of the government behind the witness, give personal assurances of truthfulness, suggest information not in the record guaranteeing accuracy, or express a personal opinion of credibility. *State v. Patterson*, 577 N.W.2d 494 (Minn. 1998). In addition, where the defense aggressively attacks the snitch's credibility, courts often overlook any impropriety as an "invited response." *E.g.*, *United States v. Aloi*, 511 F.2d 585 (2nd Cir. 1975); *United States v. Nation*, 701 F.2d 31 (5th Cir. 1983)(this is the first example above). In fact, the defense usually asserts that the plea bargain itself gives the snitch motive to lie; that opens the door for the state to reply that the "testify truthfully" term gives the snitch a motive to tell the truth. In *United States v. Beaty*, 722 F.2d 1090 (3rd Cir. 1983), the judge overruled the defense's "vouching" objection:

> I heard [counsel] do no vouching. All she said was that these people have the motive to tell the truth. That's her argument. Indeed, I gather [the defense] can certainly argue that you see a motive to tell a lie.

Arizona cases follow that logic. In *State v. McCall*, 139 Ariz. 147, 677 P.2d 920 (1983), questioning about and arguing the "testify truthfully" clause was not improper. It simply demonstrated the snitch's motive to tell the truth, without expressing the prosecutor's personal opinion as to the credibility of his testimony. *See also State v. James*, 141 Ariz. 141, 685 P.2d 1293 (1984)(citing *McCall*). The 9th Circuit seminal case, *United States v. Roberts*, 618 F.2d 530 (9th Cir. 1980) set the standard that has been adopted as the rule in Arizona case law. The *Roberts* rule did not create a bright line but depended on the facts of the case. It held that the trial judge should review the phrasing and context to decide admissibility, watching vigilantly for improper vouching in the phrasing. *Roberts* at 536. Hence though "testify truthfully" terms *may* be admissible, they would not be admissible in every case. *Id* Of course if admitted, the government may not argue facts outside the record, such as that it confirmed the testimony or compelled the snitch to be honest. *Id.*

The Minnesota Supreme Court in *State v. Patterson*, 577 N.W.2d 494 (Minn. 1998) explained why admitting the "testify truthfully" clause was proper:

> Permitting the prosecutor to introduce evidence of the terms of a witness's plea agreement, including any truthfulness provision, while making sure that the prosecutor does not directly or by implication express an opinion as to the witness's credibility, creates a proper balance between the need for the defendant to be able to challenge the witness's credibility based on the plea agreement and the state's interest in having the jury understand the witness's obligation under the agreement and allows the jury to properly evaluate and weigh the witness's testimony.

In a 9th Circuit case (originating in Arizona), the court sought to distinguish when references to the "testify truthfully" clause would "cross the line" into impermissible argument. The court found that the following questioning was *not* vouching:

> *The prosecutor asked Gibson if it were part of her agreement that she "testify truthfully and cooperat[e]," to which she responded "yes."* [36]

The court declared that this *was not* vouching because it neither implied any guarantee of the veracity of the testimony nor referred to extra-record facts. However, the court felt differently about the following argument:

> *In exchange for a reduced exposure on this charge and a recommendation of probation from my office, [Gibson] has agreed to cooperate with the government, and to testify truthfully.*

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The court concluded that that statement *was* vouching since it "mildly implies" that the government could guarantee the truthfulness of the witness. The court also noted, however, that it does not connote that "the government would be monitoring the witness's truth-speaking."

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There is a split over whether the "testify truthfully" clause can be introduced in evidence on direct or only on cross to rehabilitate if the defense attacked the snitch's credibility. For example, the 1st Circuit would not allow this evidence at all. *See United States v. Roberts*, 618 F.2d 530, 535 (9th Cir. 1980)(*citing United States v. Miceli,* 446 F.2d 256 (1st Cir. 1971)). The 2nd Circuit would allow it only on rebuttal to rehabilitate a snitch if the defendant had opened the door for it. *Roberts* (citing *United States v. Koss*, 506 F.2d 1103 (2nd Cir. 1974)). The 7th Circuit, on the other hand, would permit that evidence unfettered under the reasoning that the testify truthfully term did not imply facts outside the record and so was not vouching. Roberts (citing *United States v. Creamer*, 555 F.2d 612, 617-18 (7th Cir. 1977)); *United States v. Badger*, 983 F.2d 1443 (7th Cir. 1993).

Note that the 9th Circuit has held that the "testify truthfully" clause should *not* be brought out by the government in its opening argument, though it could come into evidence as rebuttal if the defense opened the door for it, and only *then* could be argued in closing. In *United States v. Shaw*, 829 F.2d 714 (9th Cir. 1987), the government told the jury in its opening:

> *The prosecutor and the government have agreed that as long as he is truthful we will present his truthful cooperation to the local prosecutor so they can decide what value it has for the purposes of deciding what to do with his case.*

Referring to the seminal *Roberts* case (that has been adopted by Arizona courts), the Court noted that "every plea agreement that contains a requirement to truthful testimony contains an implication, however muted, that the government has some means of determining whether the witness has carried out his side of the bargain." The problem with injecting the plea bargain into opening is that it is improperly used "as a basis for supporting the truthfulness of the witness's testimony," rather than rehabilitating the snitch. *Shaw* (*citing United States v. Brooklier,* 685 F.2d 1208, 1218 (9th Cir. 1982)).

Though most courts would allow the "testify truthfully" term into evidence and argument, when there is something *more* argued, courts have not hesitated to find it improper. For example the *Roberts* case (which is cited in Arizona opinions) would not have been reversed when the prosecutor pointed out the "testify truthfully" clause; however, when he also pointed out a detective who had been sitting in the audience during the snitch's testimony, stating that he was there to assure that it was truthful, the court reversed. Furthermore, when a prosecutor argued the "testify truthfully" term and that the snitch also was required to pass a polygraph, it was highly improper. Though the polygraph results were never admitted into evidence, the Court realized that the logical inference was that the snitch had passed it. Communicating that to the jury would never be acceptable. *United States v. Hinton*, 772 F.2d 783 (11th Cir. 1985).

Additionally, when the prosecutor argued the "testify truthfully" clause, it was improper to add that the judge must have considered the testimony truthful when he accepted the plea agreement.

Additionally, when the prosecutor argued the "testify truthfully" clause, it was improper to add that the *judge* must have considered the testimony truthful when he accepted the plea agreement. This was, incidentally, compounded by the prosecutor arguing that if the snitch lied, the judge must be part of some great conspiracy against the defendant. The court did not hesitate to reverse. *United States v. Passmore*, 671 F.2d 915 (5th Cir. 1982). Finally, in *United States v. Beaty*, 722 F.2d 1090 (3rd Cir. 1983), the prosecutor argued that the snitch had promised to tell the truth, and he was telling the truth; the first part was unobjectionable, though the Court issued a curative instruction (that the prosecutor has no special knowledge of the truth) after the second.

Editor's Note: This concludes Part 2 of our series. Look for Part 3 to be arriving soon.

Endnotes

1 *State v. Thaggard*, 527 N.W.2d 804 (Minn., 1995).
2 *Commonwealth v. Reed*, 300 Pa.Super. 224, 446 A.2d 311 (1982).
3 *People v. Iaconnelli*, 112 Mich.App. 725, 317 N.W.2d 540 (1982).
4 *Witcher v. State*, 17 Md.App. 426, 302 A.2d 701 (1973).
5 *People v. Stratton*, 286 A.D. 323, 143, N.Y.S.2d 362 (1955);
6 *United States v. Wiley*, 534 F.2d 659 (6th Cir. 1976).
7 *State v. Dorr*, 636 F.2d 117 (5th Cir. 1981).
8 *State v. Woodward*, 21 Ariz.App.133, 516 P.2d 589 (1973).
9 Incidentally, this is addressed much more thoroughly in the final part of the series on "negative vouching."
10 *State v. Reilly*, 446 A.2d 425 (Me. 1982).
11 *United States v. Lopez*, 803 F.2d 969 (9th Cir. 1986).
12 *State v. Woods*, 141 Ariz. 446, 687 P.2d 1201 (1984).
13 *Commonwealth v. Lipscomb*, 455 Pa. 525, 317 A.2d 205 (1974).
14 *State v. Bible*, 175 Ariz. 549, 602, 858 P.2d 1152, 1204 (1993).
15 *State v. Henry*, 176 Ariz. 569, 582, 863 P.2d 861, 874 (1993).
16 *State v. Hernandez*, 170 Ariz. 301, 823 P.2d 1309 (App. 1991).
17 *People v. Wilson*, 199 Ill.App.3d 792, 557 N.E.2d 571 (1990).
18 *People v. Beal*, 116 Cal.App.2d 475, 254 P.2d 100 (1953).
19 *State v. Vincent*, 159 Ariz. 418, 423, 768 P.2d 150, 155 (1989).
20 *United States v. Molina-Guevara*, 96 F.3d 698 (3rd Cir. 1996).
21 *Fitzgerald v. State*, 91 Ok.Crim. 437, 219 P.2d 1024 (1950).
22 *People v. Ford*, 113 Ill.App.3d 659, 447 N.E.2d 564 (1983); *and see People v. Richardson*, 139 Ill.App.3d 598, 487 N. E.2d 716 (1985).
23 *State v. Johnson*, 293 S.W.2d 907 (Mo. 1956).
24 *People v. Spiezio*, 191 Ill.App.3d 1067, 548 N.E.2d 561 (1989).
25 *People v. Moman*, 201 Ill.App.3d 293, 558 N.E.2d 1231 (1990).
26 *Garrette v. State*, 501 So.2d 1376 (Fla.App. 1987).
27 *People v. Anderson*, 52 Cal.3d 453, 801 P.2d 1107 (1990).
28 *People v. Perez*, 69 A.D.2d 891, 415 N.Y.S.2d 706 (1979).
29 *People v. Killen*, 217 Ill.App.3d 473, 577 N.E.2d 560 (1991).
30 *People v. Davis*, 93 Ill.App.3d 187, 416 N.E.2d 1179 (1981).
31 *State v. Googins*, 255 N.W.2d 805 (Minn. 1977).
32 *United States v. Murphy*, 768 F.2d 1518 (7th Cir. 1985).
33 Adapted from *United States v. Nation*, 701 F.2d 31 (5th Cir. 1983).
34 *United States v. Carroll*, 26 F.2d 1380 (6th Cir. 1994) (the court did reverse this case for vouching, but there was a great deal more than just the remark above).
35 *United States v. Isaacs*, 493 F.2d 1124 (7th Cir. 1974).
36 *United States v. Necoechea*, 986 F.2d 1273 (9th Cir. 1993).

BULLETIN BOARD

Attorney Moves/Changes

Kirk Morris will assume duties as Supervisor for SEF beginning November 29.

Meg Wuebbels, our Legislative Relations Coordinator (and trial attorney), will be leaving the office on December 10. She will be a lobbyist for the Children's Action Alliance.

Support Staff Moves/Changes

Frances Dairman, Administrative Coordinator, left the office on November 26. She will be working for the Adult Probation Department.

Raquel Murillo was promoted to Legal Secretary for Juvenile, Durango on November 15.

Stephanie Villalobos, Lead Secretary Group B, left the office on November 26.

Ronald Corbett, Investigator with Group C, will assume his new duties as our Juvenile Lead Investigator on November 29.

Murder in the First? Are the Crimes of First and Second Degree Murder Merged? *(Continued from page 1)*

> *death, with premeditation, caused the death of [victim] and/or acting either alone or with one or more other persons, committed or attempted to commit [underlying felony], and in the course of and in furtherance of such offense or immediate flight there from [the defendant] or another person caused the death of [victim].*

After receiving and reading the police report, you note that the state's case on the underlying felony is weak. Thus the state really is left with a first-degree premeditated murder case, and perhaps a strong one at that.

Don't despair. There may be something you can do. If your client's charges arise from acts occurring after October 1998, it may be that your client can only be convicted of second-degree murder.

The Murder Statute

There is a significant advantage to your client if he can avoid being convicted of first-degree murder.

Second-degree murder is a class 1 felony generally punishable by imprisonment of 10, 16 or 22 years for a first offense and 15, 20 or 25 years if the defendant has one of several enumerated prior convictions. A.R.S. §§13-1104, 13-604 *et. seq.*

Second-degree murder becomes first degree-murder if the killing; 1) occurs during the commission of one of several enumerated underlying felonies (felony murder); 2) involves the knowing and intentional death of a law enforcement officer; or, 3) is the result of premeditation. A.R.S. § 13-1105. It is punishable by 25 years to life, natural life without parole or death by lethal injection. A.R.S. § 13-703.

Just what premeditation is, is defined by A.R.S. § 11-1101 and this is where the problem lies.

A Short History Lesson

Prior to 1978, premeditation required the proof of "actual" reflection. In 1978 the state legislature amended the definition of *premeditation* to read as follows:

> "Premeditation" means that the defendant acts with either the intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by a length of time to permit reflection. An act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

By removing the language referring to "reflection" the legislature rendered the definition of premeditation vague and ambiguous. Does the state have to prove actual reflection or simply that there is a sufficient period of time to reflect to meet its burden of proving premeditation? After the 1997 case of *State v. Ramirez*, (more on that later) it appeared that the matter was settled.

In 1998, the state legislature again amended the definition of "premeditation" as follows:

> "Premeditation means that the defendant acts with either the intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection. *Proof of actual reflection is not required*, but an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion. A.R.S. § 13-1101 (emphasis added).

It would appear that the legislature has settled the issue. The state need not prove "actual reflection." However, by adding the language that "Proof of actual reflection is not required," the legislature may have rendered the statutory scheme defining first-degree premeditated murder unconstitutional.

By adding the language that "proof of actual reflection is not required," the legislature may have rendered the statutory scheme defining first-degree premeditated murder unconstitutional.

By removing the requirement of showing actual reflection, the legislature has committed one of two sins. First, it may have eradicated any distinction between first-degree premeditated murder and second-degree intentional murder thus merging the two crimes. Second, the legislature may have illegally shifted the burden of proof to the defense.

Obliterating the Distinction Between First-Degree Murder and Second-Degree Murder

In 1997, prior to the 1998 amendment specifically removing the need to prove "actual reflection," the Court of Appeals, Div. I, held that the element of "actual reflection" was necessary to distinguish *first-degree* murder from *second-degree* murder and that premeditation could not simply be understood as merely a length of time. *State v. Ramirez*, 190 Ariz. 65 945 P.2d 376, 1997).

If the difference between first and second degree murder is to be maintained, premeditation has to be understood as reflection.

In *Ramirez*, the appellate court reversed the conviction in a murder prosecution for the reason that the court improperly instructed the jury as to the nature of premeditation. The faulty jury instruction was compounded by improper argument by the prosecutor. The complaint of the defendant was that the instruction given by the court failed to clearly state that premeditation required "actual reflection" which allowed the state to argue that premeditation was simply a period of time.

During the closing, the prosecutor in *Ramirez* argued "It [the statute] doesn't even go on to say, hey, you have to reflect." This argument was objected to by the defense which argued that reflection is necessary for the element of premeditation to exist. The court overruled the objection and the defendant was convicted.

On appeal Mr. Ramirez argued that the improper instruction allowed for the improper argument that actual reflection is not required to prove the element of premeditation. The state argued that premeditation is, in fact, a period of time and does not require actual reflection. The appellate court agreed with the defendant and reversed the conviction.

In its opinion the court of appeals analyzed the state's argument that premeditation does not require actual reflection:

> Here is the problem with the state's interpretation of the statute: Defining premeditation as a length of time (which can be instantaneous as successive thoughts in the mind) *obliterates any meaningful difference between first and second degree murder--* other than the penalties. The legislature has not merged these two offenses; it has prescribed different elements and different penalties for them.
>
> But the state's definition of premeditation would include those unreflecting killers in the first-degree murder category, *along* with those who actually reflected before acting. We conclude that the first degree murder statute has never been aimed at those who had time to reflect but did not; it has always (sic) been aimed at those who actually reflected--and then murdered.
>
> *If the difference between first and second degree murder is to be maintained, premeditation has to be understood as reflection.* It is fair to talk of the period of time in which reflection might occur; but it is not fair to *define* reflection as the period of time in which it might occur. To have meaning, the element of premeditation must describe something that defendant actually does. Just as murder requires actual killing, premeditation requires actual reflection . . . This is what the statute is getting at--that actual reflection can be inferred from the length of time to permit reflection. That is the way it has always been and nothing we say here changes that. *What we reject, however, is the notion that premeditation is just an instant of time. Ramirez,* id. at 380-381 (emphasis added).

In other words, the *Ramirez* court recognized that if, as the state argued, the legislature had written the pre-1998 version of section 13-1101 so as to remove the requirement of "actual reflection" then it would in effect obliterate the distinction between first-degree murder and second-degree murder. The court poignantly reasoned that one could *not* interpret legislation in such a way as to argue that the Arizona Legislature would intend such a nonsensical result.

The reasoning of the court is sound. To interpret the statute as eradicating the difference between first-degree and second-degree murder would be to interpret the statute in an unconstitutional manner.

(Continued from page 11)

The Statute as it Now Exists

In 1998, apparently in an unreasoned response to the *Ramirez* decision, the legislature amended the statute to conform with the prosecution's interpretation by specifically adding the language that "[P]roof of actual reflection is not required" to prove premeditation. In other words, the legislature rewrote the statute to specifically say what the *Ramirez* court warned would be unconstitutional.

If the legislature, in amending § 13-1101, did in fact remove "actual" reflection as an element of the crime of premeditated first-degree murder, then it has effectively removed the one and only distinction between first-degree intentional murder and second-degree intentional murder.

A person who intentionally causes the death of a person, without premeditation, is guilty only of second-degree murder.

> A. A person commits second-degree murder if without premeditation:
>
> 1. Such person intentionally causes the death of another person; or
>
> 2. Knowing that his conduct will cause death or serious physical injury, such person causes the death of another person; or
>
> 3. Under circumstances manifesting extreme indifference to human life, such person recklessly engages in conduct which creates a grave risk of death and thereby causes the death of another person. A.R.S. § 13-1104.

It is possible to commit only second-degree murder after a sufficient period of time to permit reflection without actually reflecting. The period of time necessary to permit reflection can be a short as two successive thoughts. *Moore v. State*, 65 Ariz. 70, 75, 174 P.2d 282, 285 (1946). What then is the distinction between first-degree and second-degree murder if the statute can be interpreted as eliminating "actual reflection" as an element of premeditation?

The only difference between first and second-degree murder, under the statute as it currently exists, is premeditation. If premeditation is merely a period of time sufficient to *permit* reflection and if reflection can be as short as two successive thoughts, then there is no difference between time sufficient to permit reflection and insufficient time to permit reflection; no difference between premeditating and not premeditating; and, *ergo* no difference between the crimes of first-degree and second-degree murder. If this interpretation of the statute is allowed to prevail then "any murder [would be] premeditated--at the whim of the State . . ." *Ramirez*, Id. at 380.

Because the two crimes, first-degree intentional murder and second-degree intentional murder, are merged, a defendant can only be convicted of and punished under the second-degree murder statute.

Because the two crimes, first-degree intentional murder and second-degree intentional murder, are merged, a defendant can only be convicted of and punished under the second-degree murder statute. *State v. Renden*, 161 Ariz. 102, 776 P.2d 353 (1989).

Renden, is a case dealing with burglary in the first-degree versus burglary in the second-degree. There the Arizona Supreme Court held that an interpretation of the burglary statutes which effectively negates any difference between burglary in the second-degree and burglary in the first-degree merges the two crimes and can only result in a conviction of the less serious crime.

> If the only basis for the finding of first-degree burglary and of dangerousness was the theft of the gun after entering the structure, the appropriate disposition would be to reduce the conviction to one of a non-dangerous second-degree burglary and remand for resentencing. Id. at 105

Again there are only two interpretations which can be made about the addition of the language stating "actual reflection" is no longer required to be proved in order to prove premeditation.

First, "actual reflection" is no longer an element of premeditation and thus no longer an element distinguishing first-degree murder from second-degree murder. In that case, as set forth above, there no longer is such a crime as premeditated first-degree murder and a person can only be convicted of the lesser crime of second-degree murder. (Of course there still would be first-degree murder under the sections for felony murder and the intentional murder of a law

enforcement officer.) All intentional murder, which is not felony murder or involving a law enforcement officer, is second-degree murder.

Second, "actual reflection" is an element of premeditation, but the state no longer has the burden of proving that element exists.

Shifting the Burden of Proof

If we are to avoid obliterating the difference between first and second-degree murder, we must find that "reflection" is still an element which exists in premeditation. How then do we explain the language that "proof of actual reflection is not required" to prove premeditation?

There is another possible interpretation of the legislatures intent in adding the language that the state no longer needs to prove "actual reflection" in order to prove premeditation. That is: Actual reflection is still an element of premeditation, and thus an element of first-degree murder under § 13-1105, but the onus is on the defendant to prove the absence of actual reflection.

Thus, the only way to avoid obliterating the distinction between first-degree and second-degree murder, under the statute as it now stands, is to unconstitutionally shift the burden of proving the element of reflection (or absence thereof) to the defendant.

Traditionally premeditation, and all its elements, are a part of the *corpus delecti* of premeditated first-degree murder. *State v. Willoughby*, 181 Ariz. 530, 540, 892 P.2d 1319, 1329 (1995); *State v. Ramirez*, Id.

The due process clause places the burden on the prosecution to prove beyond a reasonable doubt every element of a criminal offense. *In re Winship*, 397 U.S. 358, 365, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368, 375-76 (1970). Where intent is an element of the crime charged, the question of intent "cannot be taken from the trier of fact through reliance on a legal presumption." *United States v. United States Gypsum Co.*, 438 U.S. 422, 435, 98 S.Ct. 2864, 2872, 57 L.Ed.2d 854, 868 (1978). "And although intent is typically considered a fact peculiarly within the knowledge of the defendant, this does not ... justify shifting the burden to him." *Mullaney v. Wilbur*, 421 U.S. 684, 702, 95 S.Ct. 1881, 1891, 44 L.Ed.2d 508, 521 (1975). See also *State v. Jensen*, 153 Ariz. 171 (1987).

Thus, the only way to avoid obliterating the distinction between first-degree and second-degree murder, under the statute as it now stands, is to unconstitutionally shift the burden of proving the element of reflection (or absence there of) to the defendant.

Conflicting Jurisdictions

It should be noted that the decision in *Ramirez*, is diametrically opposite to the Division II case of *State v. Haley*, 287 Adv. Rep. 3, 978 P.2d 100 (Ariz. App. 1998) which stated:

> Moreover, because we find that premeditated murder requires only that the defendant's intent to kill must precede the killing by a sufficient period of time to permit reflection, and does not require actual reflection, we find no error in the court's instruction nor the state's arguments before the jury. Id. at 102.

Two things must be remembered about *Haley*. First, it is a Division II case and thus, arguably, not controlling in Maricopa County. Second, the Appellate Court in *Haley* fails to set forth any analysis or discussion justifying or explaining its conclusion. Apparently the court simply relies on the literal wording of the statute without providing any discussion or analysis like that found in *Ramirez*.

With the *Haley* and *Ramirez* cases there clearly exists a conflict between the two Divisions. The Arizona Supreme Court had an opportunity to resolve the conflict but, although acknowledging the conflict exists, was able to evade the issue because the defendant had also been convicted of Felony Murder. *State v. Smith*, 193 Ariz. 452, 974 P.2d 431, at 439 (1999)

Conclusion

An indictment of a defendant for first-degree premeditated murder may be insufficient, as a matter of law, because the statute on which it rests is itself unconstitutional. An indictment on an unconstitutional law is a violation of the due process clauses of the state and U.S. constitutions. This may justify a filing of a motion to dismiss under Rule 16 of the Rules of Criminal Procedure.

Our Supreme Court will have to resolve this issue eventually. Perhaps your case will be the one.

What Do You Need To Know About a Dependency Proceeding?

By Suzette Pintard
Division Chief - Dependency

Your client just called you from jail. She has been told that her children were removed from her home by Child Protective Services (CPS). She received a Notice of Hearing and a copy of a Dependency Petition. She's upset and she wants you to tell her what to do. What do you do? What do you need to know about a dependency proceeding?

First, if you're an attorney in the Public Defender's office, you should call the Public Defender Dependency Unit and ask if the Dependency Unit represents the children. A conflict of interest may exist if the Public Defender simultaneously represents a child who is alleged to be dependent and the child's parent.

The Public Defender Dependency Unit represents minor children in juvenile court dependency and severance proceedings. The Dependency Unit is appointed by the juvenile court to represent a child as the child's attorney or as the child's guardian ad litem (GAL). In some cases, the Dependency Unit is appointed as both attorney and GAL.

In a dependency proceeding, the petitioner alleges and attempts to prove that a child is dependent. A dependent child is defined by A.R.S. Section 8-201(13) as a minor with no parent currently willing or able to take care of him. In the majority of cases, the petitioner is the Department of Economic Security, Child Protective Services (CPS), represented by the Attorney General. Private parties can also file dependency petitions. Often, private petitions are filed by a child's GAL or by a relative.

The child's attorney or GAL may take a position adverse to a parent for any reason that indicates the parent is currently unable to parent his child. For example, if the parent is abusive, actively using drugs or incarcerated, the child's attorney or GAL is likely to advocate for the child remaining out of the parent's home.

If your client wants to parent her child, she will need to be actively involved in the dependency case. She will need to work with CPS on a case plan to obtain the return of her children. If your client is indigent, she is entitled to court appointed counsel to assist her in the dependency proceeding. Your client should contact the Clerk of the Court at the juvenile court as soon as possible to request appointment of an attorney. Contact can be made by letter or in person. She should reference the JD case number in her request. The Office of the Legal Defender is appointed to represent many parents in dependency proceedings.

The CPS case manager will interview your client. You should prepare your client for this interview. Your client should be instructed, specifically, not to discuss pending criminal matters with CPS because the CPS case manager will ask your client about any pending charges. The case manager will also ask your client about her history of employment, substance abuse and criminal convictions, as well as her family and living situation.

Dependency cases initiated by the state begin with a Preliminary Protective Conference and Hearing (PPC and PPH). The PPC is an informal conference conducted at the juvenile court. The hearing immediately follows the conference. All the interested parties may attend the conference. Generally, the conference includes the parents and their attorneys, the child's attorney, the case manager and the assistant attorney general on behalf of CPS. Your client should arrange to appear in person or by telephone, if possible.

The case plan and the services CPS will offer to your client will be discussed at the conference and reviewed with the court at the hearing. The services provided to a parent typically include a psychological screening battery or a full psychological evaluation, counseling, parent aide services, parenting classes and visitation with the child. Frequently, parents with pending criminal charges refuse to participate in the psychological testing on the advice of counsel. If your client is incarcerated, she should be strongly advised to participate in any programs which would not reveal facts detrimental to her criminal case, such as NA and AA meetings. Substance abuse treatment and urine analysis testing are frequently made part of a parent's case plan, if appropriate.

In a dependency case filed by a private petitioner, the PPC and PPH are not held. However, the case proceeds in generally the same manner as a case filed by the state. The court usually orders CPS to investigate and file a report. The CPS case manager will offer the services described above, as called for by the facts of the case. Court ordered mediation is held after the initial hearing to discuss services for the family and resolution of the case.

In dependency cases the legal issue of whether or not the children are dependent is discussed at the conference, mediation, and hearings held prior to trial. Parents can enter a denial and set the matter for trial or they can deny the allegations in the dependency petition and submit the issue to the

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court. The court can find a dependency based on the petition and the case manager's report and attachments. Sometimes, a parent will stipulate to a dependency on a specific ground. Parents with pending criminal charges often submit the matter to the court with a denial of specific allegations in the petition.

The CPS case manager will closely monitor your client's participation in reunification services. Due to recent changes in the law, dependency cases now proceed at a more rapid pace. Your client needs to know that failure to demonstrate prompt and meaningful participation in the CPS case plan can result in a parent's parental rights being terminated. Thus, if you are representing a client in a criminal case and they receive notice of a hearing regarding dependency, you need to act quickly. If you have questions, just give us a call at (602) 506-5379.

- **If your client wants to parent her child, she will need to be actively involved in the dependency case.**
- **If your client is incarcerated, she should be strongly advised to participate in any programs which would not reveal facts detrimental to her criminal case, such as NA or AA meetings.**

WORDS OF WISDOM FOR NEW ATTORNEYS

By Candace Hewitt Kent
Trial Counsel – Group E

So you've just graduated law school. And you've been lucky enough to get hired at the best law firm in town: the Public Defender's Office. Now you sit in your office with your brand new rule book and unblemished sentencing chart and stare at the stack of files that seems to grow by the minute on your desk. So, what do you do now? First, take a deep breath, then get up out of your chair and go down the hall and find another attorney to talk to. Talk about your feelings, your anxiety, your cases, your clients, your last little victory and your last seemingly horrendous mistake. Remember that we've all been there.

As the Trial Counsel for the newly formed Trial Group E, the majority of my time is spent counseling and mentoring new attorneys in the office. When a new attorney sits in my office seeking advice on some matter, I find myself remembering with fond terror the similar questions I asked when I first joined the office over nine years ago. And because the wisdom of the experienced is never to be underestimated, I still seek out the advice of others to aid me in my new position as Trial Counsel. In that spirit, I recently asked several individuals both in and out of the Public Defender's Office for a response to the following question: "What is your one best piece of advice for a new public defender?" I hope we all can find some wisdom in their words.

Be wise enough to know that people who have been around know how things work even if they are not lawyers.

Daniel Patterson, a private practitioner and former Deputy Public Defender would advise a new attorney to "ask lots of questions of people whom you think might have the right answers." This notion is shared by Sandi Fredlund, Judicial Assistant to the Honorable Anna Baca, who adds "I am always willing to assist if someone needs help or has a question. We were all new at this job at sometime and needed help so don't be afraid to ask for it." Veteran Detention Officer George Schuster advises new attorneys to "be wise enough to know that people who have been around know how things work even if they are not lawyers." So ask questions! The people you work with in the office, and outside the office, are an invaluable resource. Solo practitioner Eleanor Miller understands the value of such a resource. Her advice to new attorneys is as follows:

> Find a mentor in your office, an Emmet Ronan, a Donna Elm, a Larry Grant or a Candace Kent (thanks, Eleanor) and follow them around whenever possible. Do nothing, or for that matter don't do anything, without running it by your mentor first. Use their experience; learn from their experience. Learn strategy from them. Strategy is the most important thing you can learn as a new attorney.And finally, don't listen to rap music.

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Brainstorming is also another excellent piece of advice. As Deputy Public Defender John Rock points out, all attorneys need to "brainstorm or just think out loud with each other. Even veteran attorneys need to talk to each other to hone their arguments, to gain inspiration and to find another way to attack the state's case. If nothing else, it affirms that we aren't in this alone." Getting the perspective of others is not only a good way to size up legal arguments but it can be most helpful on issues of style. To that end, private practitioner Michael Terribile's advice is short, sweet and extremely important: "Watch as many trials as you possibly can." I know from my own experience that one of my best training forums has always been watching talented seasoned lawyers argue to the judge and jury. An added plus is that by watching trials you also are afforded the opportunity to gauge your future opponents.

Speaking of the courtroom, Court Reporter David German would remind new attorneys that "when making a record, pretend you are talking to a panel of appellate judges. Be prepared and remember it is YOUR record." Furthermore, as Scott Loos of the Office of the Court Interpreter points out "don't take anything for granted when it comes to language and the courts (especially as regards to law enforcement); there are challenges to be made, so ask the questions that need to be asked and set some precendents." In other words, don't be afraid. Or as former prosecutor and now Deputy Public Defender Vikki Liles counsels:

> Don't be afraid to go to trial, to litigate an issue, or to advocate for your client. Don't be afraid to get tough with your clients if they need it, or to be gentle with them if they need your understanding and strength. Most of all, don't be afraid to let everyone know that if your client's life or liberty is at stake, it will be taken away only by going through you. You are a defender—the only attorney authorized by the Constitution. Don't be afraid to act like one.

Tough words to live by? Maybe. But this job is even tougher when you don't. Each and every case and each and every client is important on some level because the Constitution is important to everyone. And isn't that why each of us gets up every day to do this job? It's true that some days and some cases are harder than others. Some days, inspiration is nearly none existent. But find it you must. The Honorable Silvia Arellano[1] offers these thoughts to new attorneys:

> My advice to new attorneys will start with the insight of Johann Wolfgang Von Goethe (1749-1832) taken from the play "Faust":
>
> Lose this day loitering–"twill be the same story
> To-morrow – and the next more dilatory;
> Each indecision brings its own delays,
> And days are lost lamenting o`er lost days.
> Are you in earnest? Seize this very minute—
> Boldness has genuis, power and magic in it.
> Only engage, then the mind grows heated—
> Begin it, and then the work will be completed!"

If you are willing to let these words guide you, as they have guided me, put them to work in any number of ways. My suggestions are:

> Be a doer rather than a critic, complainer or explainer.
> Let you speak for who you are.
> Do not suffer fools gladly.
> Ignore destructive criticism.

And finally, I leave you with one of my favorite quotes from Albert Einstein "Great spirits have always encountered violent opposition from mediocre minds."

New attorneys, you have been given the task of defending the indigent accused by the government of criminal activity. It is a hard job but a most honorable one. Deputy County Attorney Jerry Bernstein offers the following sage advice: "fight hard for your client, yet remain professional in your dealings with both the prosecutor and the judge and his or her staff. Life is too short to be abusive to others. Finally, the client doesn't always tell you the truth. They may believe that you're part of the enemy (based upon my three years as a public defender.)" Painfully accurate, Mr. Bernstein's remarks serve to corroborate the succinct advice of our own appellate wonder Garrett Simpson when he advises us to "always remember, your first client of the Bill of Rights."

And when all else fails, you new attorneys can always fall back on the advice of John Rock who quite wisely states that when faced with a problem, "do whatever Candace tells you as soon as Candace tells you." Happy litigating to all!

Endnote

1 Judge Arellano is located on the 9th Floor of the Central Court Building and her division phone number is 506-3649. She sincerely encourages the reader to call or stop by if she can answer a question or be of any assistance.

THE STRESS OF LIFE

By Leonard T. Whitfield
Defender Attorney – Group C

We have all been there. It is the plea deadline date, your client has two prior felony convictions, and the plea offer is one for no allegation of priors and no agreements, and your client wants to think about it for a couple of weeks. Your client is "confused" about the petition to revoke probation, even though he has been reinstated three times in the past two years. Your client wants to go to trial to "make the state pay," even though he has two priors and no defense. Your client does not want to plea because he got "screwed in the past" by taking a plea, and besides, "what's the difference between two years and ten years?" Your client is a pedophile charged with multiple counts of child molestation, is offered a plea for ten years prison, has confessed to the conduct, but wants to go to trial because his computer skills will be obsolete in ten years. And besides that, he should not have to go to prison because he kept the boys from getting into drugs and gangs and taught them valuable computer skills during their time together. It may be that you are in the middle of trial, the state has rested, and you and your client have agreed that he would testify, but when your time comes (after the judge denies your Rule 20 motion), your client decides to abscond. Perhaps the most stressful situation of all, however, is when you know that your client is innocent, but if you lose, they face mandatory prison.

In the practice of criminal law, long-term stress is problematic. Eventually, the body just wears out.

Criminal law practice provides many opportunities for personal fulfillment, introspection, and growth. While a certain amount of stress comes with the territory, Dr. Hans Selye has said that it is not stress that is harmful – it is distress. Our key objective should be to prevent stress from turning into distress. This requires vigilance on our part if we are to adequately represent our clients.

Far too often we deal with the effects of stress rather than prevent stress from getting out of control. At the end of the day, we find ways to relax (or sometimes forget) or at least calm down. Many of these "after the fact" methods (exercise, meditation, yoga, aromatherapy, massage, etc.) are beneficial, but others (like alcohol and prescription drugs) have harmful side effects which cause more problems than they solve. What about during the heat of battle? Why not lessen the effects of stress "at the source" so that the inevitable stressors do not cause distress?

Research shows that individuals with high levels of stress have fewer than half the antibodies in their systems that subjects under less stress do. Stress can cause fatigue, irritability, memory loss, headaches, high blood pressure, gastrointestinal disorders and insomnia. Dr. James F. Balch, M.D. states in his book, *Prescription For Nutritional Healing*:

> Researchers estimate that stress contributes to as many as 80 percent of all major illnesses, including cardiovascular disease, cancer, endocrine and metabolic disease, skin disorders, and infectious ailments of all kinds . . . . Stress is also a common precursor of psychological difficulties such as anxiety and depression.

Stress causes an increased production of adrenal hormones, which in turn, accounts for most of the symptoms associated with stress. With regard to this increased production of adrenal hormones, Dr. Balch goes on to say:

> It is also the reason that stress can lead to nutritional deficiencies. Increased adrenaline production causes the body to step up its metabolism of proteins, fats, and carbohydrates to quickly produce energy for the body to use. This response causes the body to excrete amino acids, potassium, and phosphorus; to delete magnesium stored in muscle tissue, and to store less calcium. Further, the body does not absorb ingested nutrients well when under stress. The result is that, especially with prolonged or recurrent stress, the body becomes at once deficient in many nutrients and unable to replace them adequately. Many of the disorders that arise from stress are the result of nutritional deficiencies, especially deficiencies of the B-complex vitamins, which are very important for proper functioning of the nervous system, and of certain electrolytes, which are depleted by the body's stress response.

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In the practice of criminal law, long-term stress is problematic. Eventually, the body just wears out. The failure to properly deal with increased production of adrenal hormone causes the body to wear out much faster than it normally would. The intake of excessive amounts of caffeine, together with alcohol, tobacco and mood-altering drugs only exacerbates the situation.

There is a solution to the stress disorders that "are the result of nutritional deficiencies, especially deficiencies of the B-complex vitamins." According to Dr. Balch, the solution is supplementing your diet with sustained release vitamin B-complex (50-125 mg daily) and large doses of vitamin C (3000 - 10,000 mg daily), together with additional calcium and magnesium.

This author can testify to the effectiveness of this type of supplementation. The so-called "minimum daily requirement" or "required daily allowance" is designed to keep you alive, not to reduce stress. Our job is not a "minimum-type" job. During my first criminal trials back in 1972, I was scared and nervous, despite thorough preparation. When my wife suggested vitamin B-complex, I decided to give it a try. Much to my surprise, I became more at ease, was able to think more clearly, and was able to more effectively deal with the pressures of trial. Whether it's vitamins, exercise, friends, family or fellowship, the important thing to remember is that when dealing with stress, do it in a positive non-destructive fashion.

ARIZONA ADVANCE REPORTS

By Terry Adams
Defender Attorney – Appeals

***Mack v. Cruikshank*, 304 Ariz. Adv. Rep. 19 (CA 2, 9/14/99)**

This was a D.U.I. prosecution where it was discovered that the Intoximeter RBT IV, which was used, was inherently unreliable and therefore, the state agreed to dismiss the (A)(2) charges and agreed not to use the test results for any reason. The defense moved to dismiss the (A)(1) charges claiming a due process violation because the state knew, or should have known, that the machine was unreliable and by still using it, the state unreasonably interfered with the defendant's rights to obtain potentially exculpatory evidence. The court held that there was no finding that the sate acted in bad faith because there was no showing that it should have known of the unreliability. Therefore the remedy was to dismiss only the (A)(2) charge.

***State v. Garcia*, 304 Ariz. Adv. Rep. 7 (CA 1, 10/5/99)**

The defendant was charged among other things with rape. Another individual was also accused of raping the same victim. A DNA sample was taken from her clothing and it was determined that more than one individual contributed to the sample. The issue on appeal was whether the formulas used to calculate the likelihood ratios of these mixed samples satisfied the Frye test for admissibility. The court determined that they did.

***State. v. Smith*, 304 Ariz. Adv. Rep. 3 (CA 29/23/99)**

The defendant was charged with two counts of aggravated assault dangerous. The court determined that the interrogation conducted at his home was not custodial and therefore, not subject to suppression. Prior to trial the prosecutor and defense counsel, with the court's blessing, stipulated to concurrent sentences and an eight-person jury. The court held that counsel could not waive the defendant's right to a twelve-person jury, that the court must personally address the defendant much like waving the right to a jury trial.

***State v. Van Adams*, 306 Ariz. Adv. Rep. 22 (SC, 6/18/99)**

The defendant was convicted of first-degree murder and sentenced to death. The facts were that the defendant went to a new sub-division and had a female real estate agent show him model homes. She was found murdered in one of the homes. The state introduced evidence that other female employees under suspicious circumstances had previously showed him various models and that he was convicted in California of attempted rape of a female real estate agent under very similar circumstances. On appeal the court determined that because of the striking similarities of the other acts it was not error to

(Continued on page 19)

admit them under 404(b) of the rules of evidence. The court also held that since the defense was mistaken identity that it was not error to refuse to give a second-degree instruction. The court also held that the protocol for PCR testing regarding DNA is generally accepted by the scientific community and was therefore admissible under Frye. The court also determined that the death penalty was properly imposed.

***State v. Harrison*, 306 Ariz. Adv. Rep. 30 SC, (6/18/99)**

The defendant was convicted of unlawful flight and three counts of aggravated assault on police officers. The court sentenced him to aggravated terms on all counts but ran the sentences concurrent. On appeal the defendant argued that the court failed to comply with A.R.S. § 13-792(B) which requires that the court set out factual findings and reasons in support of such findings on the record at the time of sentencing. Although the court lectured the defendant as to the error of his ways and imposed what could be considered a lenient sentence compared to what he could have received with consecutive sentences, the court determined that the record did not support an aggravated sentence. The court also determined that failure to comply with the statute could not be harmless, thus resolving conflicting opinions from the Court of Appeals.

***State v. Pecard*, 306 Ariz. Adv. Rep.10 (CA 1, 10/12/99)**

The defendant was indicted on several counts resulting from his infiltration of Sheriff Joe's office, where he was certified as a law enforcement officer. After his arrest he was housed by Sheriff Joe. During this period of time it was determined by the trial court that he was denied access to his attorneys, that his telephone calls to his attorneys were monitored, that his privileged mail was opened and legal materials were removed from his cell. Because of this inappropriate and unconstitutional conduct by the sheriff's office, the trial court dismissed all charges with prejudice. On the state's appeal the court affirmed the trial court's findings, however, they remanded the matter for the trial court to determine if less serious sanctions than dismissal could still afford the defendant a fair trial.

***State v. Razo*, 306 Ariz. Adv. Rep.16 (CA 2, 10/19/99)**

The length of community supervision one must serve after a prison sentence must be calculated in terms of years or months, not days.

***State v. Taylor*, 306 Ariz. Adv. Rep. 3 (CA 2, 10/19/99)**

The defendant was convicted of child molestation. At trial the state introduced evidence of a videotaped statement of the victim under the auspices of A.R.S. §13-4252, which allows admission of a minor's recorded statements if certain requirements are met. On appeal the court found the statute unconstitutional because it infringes on the Supreme Court's power to make procedural rules, and conflicts with the court's Rules of Evidence and Rules of Criminal Procedure regarding hearsay. Therefore, it infringes upon the court's exclusive rule making authority. The conviction was reversed.

***State v. Fields*, 306 Ariz. Adv. Rep. 20(CA 2, 10/15/99)**

The defendants were charged with homicide resulting from driving under the influence. Samples of their blood were analyzed at the Tucson crime lab. Because of perceived deficiencies in the testing procedure, the defendants moved the court for an order to allow them to inspect the lab including videotaping personnel, equipment and procedures used in analyzing blood. The court granted the motion and the state filed a special action. The court determined that the trial court abused its discretion by granting the motion, finding that the defendant's provided no evidence that this procedure would be more productive than interviews and documents in analyzing the labs methods.

HAPPY HOLIDAYS

October 1999
Jury and Bench Trials

Group A

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
10/5-10/7	**Rossi** Robinson	Dunevant	Flores	CR 98-10650 Burglary/F3 Theft/F3	Hung Jury(5-3 Guilty)	Jury
10/7-10/12	**Rempe**	McVey	Greer	CR 97-05203 Child Abuse/F4	Not Guilty Child Abuse/F4 Guilty Reckless Child Abuse/F6	Jury
10/12-10/13	**Klepper** Jones	Galati	Hunt/Forness	CR 99-05290 Sale of Methamphetamine/F2	Not Guilty	Jury
10/13-10/18	**Wall** Yarbrough	Wotruba	Godbehere	CR 99-05638 Misconduct Inv. Weapons/F4 POND/F4 PODP/F6	Not Guilty of MIW Guilty of POND Not Guilty of PODP	Jury
10/14-10/18	**Zick & Hall**	Galati	Hanlon	CR 99-08906 Agg. Assault/F5	Guilty	Jury
10/20-10/25	**Flores**	Galati	Greer	CR 99-07477 Agg. Assault/F3	Guilty	Jury
10/27-10/28	**Valverde**	Baca	Forness	CR 99-09037 PONDFS/F2 PODD/F4 PODP/F6	Guilty	Jury
10/27-10/29	**Davis** Robinson *Molina*	Akers	Duvendack	CR 99-02091 Agg. Assault Dang./F3 Dis. Conduct/F6 8 prior felony convictions alleged	Not Guilty of Agg. Assault Guilty of Disorderly Conduct Dangerous	Jury
10/28-11/01	**Howe**	McVey	White	CD 99-01292 Aggravated DUI/F4	Guilty	Jury

Group B

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
10/5-10/7	**Whelihan**	Hutt	Murray	CR 98-09618B PODD/F4 PODP/F6 Misc. w/Weapon/F4 Prohibited Possessor/F4 w/prior on probation	Guilty	Jury
10/19-10/19	**O'Donnell**	Hilliard	Leigh	CR 99-08997 PODD/F4 PODP/F6	Guilty	Jury
10/19-10/20	**LeMoine** Kasieta	Hall	Boyle	CR 99-05830 Aggravated DUI/F4 Misdemeanor DUI	Guilty	Jury
10/20-10/22	**Blieden**	Gottsfield	Charnell	CR 99-04258 Agg. Robbery/F3 Kidnapping/F2	Not Guilty	Jury
10/20-10/27	**Agan** Munoz	Hutt	Rodriguez	CR 99-07408A 4 cts. Armed Robbery/F2 Kidnapping/F2	Hung Jury (8-4)	Jury
10/27-10/27	**Whelihan**	Arellano	Hotis	CR 99-04421 Agg. Assault on Officer/F6 w/prior on probation	Not Guilty	Jury

Group C

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
9/23-11/9	**Ronan & Peterson** *Turner*	Kaufman	O'Connor	CR 98-13880B Child Abuse/F2 (4 counts) dangerous crimes against children	Not Guilty Child Abuse/F2 Guilty – Lesser (Reckless)/F3	Jury
10/5-10/5	**Klobas**	Aceto	Brenneman	CR 99-93187 Criminal Damage/F6	Directed Verdict – Not Guilty	Bench
10/6-10/14	**DuBiel**	Ishikawa	Holtry	CR 98-95297 Agg. DUI/F4	Guilty	Jury
10/12-10/13	**Gooday & Cotto**	Oberbillig	Andersen	CR 99-02021 POM/F6 PODP/F6	Not Guilty	Jury
10/25-10/25	**Gazziano**	Dunevant	Park	CR 99-92133 Trespass/F6	State designated as a misdemeanor – Guilty	Bench
10/26-10/27	**Klopp-Bryant & Eskander**	Dunevant	Park	CR 98-95342 PODD/F4 PODP/F6	Guilty	Jury
10/25-10/28	**Barnes** Ames	Jarrett	Brenneman	CR 99-90371 Agg. Assault/F3	Not Guilty	Jury

Group D

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
9/14-9/17	**Merchant** Hamilton *Fairchild*	D'Angelo	Cotter	CR 99-09017 Agg. Assault/F2 DCAC Agg. Assault/F3D	Not Guilty all three Agg. Asslts. But Guilty on 1 Ct. Prohibited Possessor, F4 (With 2 Priors)	Jury
9/27-10/4	**Ferragut** Salvato	Katz	Hammond	CR 99-09252 Discharging Weapon at res. Structure/F3D	Hung Jury 7/5 to acquit	Jury
10/4-10/7	**Ferragut** Salvato	Hilliard	Adleman	CR 99-05104 Aggravated Assault/F5	Guilty	Jury
10/4-10/6	**Billar**	Kamin	Novak	CR 99-08334 Theft/F3	Not Guilty/F3 Guilty: Lesser included Theft a class 4 Felony	Jury
10/7-10/12	**Schaffer** Fusselman	Katz	Rizer	CR 99-07896 Misconduct Involving Weapons/F4	Not Guilty	Jury
10/7-10/18	**Stazzone** Bradley	D'Angelo	Barry	CR 99-06032 Agg. Assault, dangerous/F3	Not Guilty/F3 Guilty of Lesser Included assault/m3	Jury
10/12-10/15	**Merchant** Hamilton	Kamin	Brnovich	CR 99-06148 Agg. Assaults/F6	Guilty Count 1 and Not Guilty Count 2	Jury
10/12-10/20	**Leyh & Ferragut** O'Farrell *Kay*	Wilkinson	Ruiz	CR 99-02886 Armed Robbery/F2 Kidnap/F2 Aggravated Assault/ F3	Guilty	Jury
10/13-10/14	**Kibler** Barwick	Dunnevant	Tucker	CR 99-08405 Theft Stolen Vehicle/F3	Not Guilty	Jury
10/20-10/25	**Merchant** Barwick	D'Angelo	Cottor	CR 99-09759 Attempted Armed Robbery/F3D Forgery/F4	Not Guilty Attempted Armed Robbery, Dangerous; Guilty Forgery with 2 priors	Jury
10/26	**Kibler**	Gerst	Contreras	CR 99-07280 1 Ct. Theft/F3	Dismissed	Jury
10/26	**Merchant**	Sheldon	Poster	CR 99-05511 Agg. Assault/F2D DCAC Marij. Poss. Grow/F6	Plea to Court	

Group E

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
9/13-9/16	**Rock**	Baca	Daiza	CR 99-04281 Agg. Assault/F2D	Guilty	Jury
10/5-10/14	**Brown** O'Farrel	Gerst	Lamm	CR 99-06726 CR 99-8786 Attempted Murder/F2 Agg. Assault/F3	Guilty	Jury
10/5-10/6	**Evans & Ryan**	Galati	Forness	CR 99-04688 PODD/F4 POND/F4	Directed Verdict	Jury
10/7-10/14	**Lehy & Ferragut** Fusselman O'Farrel Barwick *Kay*	Wilkinson	Ruiz	CR 99-01886 Armed Robbery/F2 (16 counts)	Guilty on all counts	Jury
10/18-10/20	**Wray**	Jones	Pitman	CR 98-14125 Aggravated DUI/F4	Guilty both counts	Jury
10/18-10/20	**Flynn & Passon**	Sheldon	Hanlon	CR 99-10285 Unauth. Use of Means of Transp./F6	Not Guilty	Jury
10/19-10/20	**Palmisano** Souther O'Farrell	O'Toole	Lamm	CR 99-04800 Armed Robbery/F2 w/2 priors-dismissed priors to do bench trial	Not Guilty	Bench
10/20-10/22	**Carpenter**	Bloom (West Phx.)	Kane	CR 99-06622 DUI (drugs)/MI	1 Ct. Not Guilty 1 Ct. Not Guilty	Jury
10/26-10/28	**Evans & Kent**	Sheldon	Luder	CR 99-05601 Sale of Narc Drugs/F2 Att/Trf Stln Pr/F3	Guilty Both Counts	Jury

Office of the Legal Defender – October, 1999

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
9/29-10/1	**Keilen**	Dougherty	Lindtedt	CR 99-01599 PODD/F4 PODP/F6	Guilty	Jury
9/30-10/7	**Dupont** J. Williams	Baca	Pineda	CR 99-04296B Poss. Of Equip. & Chem. For Manuf. Of Dang. Drugs/F3	Guilty	Jury
10/19-10/26	**Ivy** Pangburn	Dairman	O'Neil	CR 99-90084B Sexual Conduct w/Minor/F2 (4 counts)	Guilty	Jury
10/5-10/19	**Parzych** Abernathy	Aceto	Ditsworth	CR 98-93404D Armed Robbery/F2 Dangerous Agg. Assault/F2 DCAC Murder 1st Degree/F1 Dangerous	 Guilty Guilty Hung Jury (8-2)	Jury

Office of the Legal Defender – September, 1999

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
9/1-9/8	**Keilen PangBurn**	Wotruba	Cottor	CR 98-14413 PODD/F4 POM/F6 PODP/F6	Guilty	Jury
9/8-9/9	**Funckes**	Arellano	Pierce	CR 99-03759 Att POND/F5	Not Guilty	Jury
9/8-9/9	**Keilen** PangBurn	Schwartz	Baldwin	CR 98-16377D Theft/F3 Trafficking in Stolen Prop./F3	Not Guilty	Jury
9/8-9/10	**Tate**	Akers	Farnum	CR 98-14277B Discharging Firearm-Residential Structure/F2 Discharging Firearm-Non-Residential Structure/F3	Not Guilty Guilty	Jury
9/9-9/14	**Baeurle** Horrall	McVey	Gadow	CR 99-00707B Discharging Firearm-Occupied Structure (Dang.)/F2 Agg. Assault (Dang.)/F3 Disorderly Conduct/F6	Hung Jury on First Three Counts (5-7); Guilty of Disorderly Conduct	Jury
9/13-9/16	**Tate**	Gerst	Lockhart	CR 98-15216A PODDFS/F2	Guilty	Jury
9/14-9/20	**Parzych**	Ellis	Perry	CR 98-12581A Agg. Assault (Dang.)/F3 w/1 Prior	Special Action to interview co-defendant's victims – Approved by Court of Appeals; Not Guilty	Jury
9/16-9/20	**Dupont** **Patton** PangBurn D. Allen	Dougherty	Naber Hammond	CR 99-07637 Burglary/F4 Theft/F4 w/2 Priors	Not Guilty	Jury

Make a Note!

The Office of the Maricopa County Public Defender
and
The City of Phoenix Public Defender's Office

Annual DUI Seminar

Friday January 28, 2000

Set aside time and mark your calendar now to attend this upcoming educational opportunity.
Further details will be available soon.

November 1999 Volume 9, Issue 11

The Office of the Maricopa County Public Defender

Presents

The 4th Annual Trials Skills College

March 15, 16 & 17, 2000
A.S.U. College of Law

On March 15, 16 & 17, 2000 the Office of the Maricopa County Public Defender will present their 4th Annual Trial Skills College at the Arizona State University College of Law. This 2½ day intense trial skills college will concentrate on openings, cross examination, impeachment, and objections. The format is a combination of lecture and demonstration followed by small group breakout sessions where participants are video taped and critiqued.

Day One – Focus on Openings
Taught by Katherine James and Alan Blumenfeld of ACT of Communication

Day Two – Focus on Cross Examination
Taught by Terrence MacCarthy from the Federal Public Defender's Office in Chicago

Further information will be distributed at a later date.

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for The Defense

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